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LEADERSHIP PRINCIPLE AND CRIMINAL RESPONSIBILITY

Description

This paper shows the implications of the leadership principle on the responsibility of "leaders" in the Nazi structure of state, Party, economy, and other organizations for the commission of war crimes. It pays special attention to statements made by Nazi leaders on the topic of the leadership principle and to writings of authoritative Nazi authors concerning the same subject, and it draws certain conclusions as to the broader responsibility which can be developed concerning these leaders' criminal responsibility.

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INTRODUCTION

The purpose of this paper is to illustrate the general theory of responsibility of a superior for the acts of his subordinates under the Nazi hierarchical organization.

The structure and function of the Nazi State was such that, while all power and authority was theoretically vested in Hitler, as Fuehrer, nevertheless a great range of discretionary power was exercised by regional "sub-leaders", who, rather than being mere automatons of Hitler and other high officials of the Nazi hierarchy, were considered collaborators in the Nazi scheme, and as such were responsible for the formulating of broad policies within the particular sphere of their jurisdiction. The more such policies involved a political aspect, the freer they were from any form of legal restraint, and the less likelihood was there that any specific orders would be handed down from the policy making leaders to their executory subordinates. Because of this frequent absence of direct orders, and often an absence of any knowledge on the part of these policy making leaders as to the actual methods used in carrying out their policies, considerable difficulty might be encountered in incriminating such leaders on established legal principles. For instance, the Law of Conspiracy requires an intentional participation in the criminal design by the co-conspirator; and under the doctrine of principal and accessory there must

be a specific enticement or encouragement to commit some specific criminal act, mere assent or acquiesence being insufficient. But under the Nazi theory of responsibility, a leader is responsible for the acts of his subordinates despite the fact that he may not have ordered or acquiesced in the particular action of such subordinate. By drawing an analogy to the "leadership" theory of responsibility as developed by the Nazis themselves, a theory of incrimination in connection with war crimes might be developed which could be applied to fit the special circumstances arising under the Nazi hierarchy, and which might be much more comprehensible to an incriminated member of the Nazi party or State than any technical established rule of law which might otherwise be followed.

I

According to Nazi theory, the German political community, built upon three basic pillars consisting of the Nazi Party, the state machine, and the military, is organized as an "order of leadership" (Führungsordnung).1/ This implies that power and authority is always exercised by one "leader", who, although supported by the alleged confidence and allegiance of his "followers", is supreme within his particular sphere and is completely unhampered by any parliamentary or otherwise representative or democratic devices.2/

Thus at the top of the entire structure, Hitler as Führer 3/ concentrates in his person all political power, unrestricted by any group or institution, whether of state, Party, or otherwise,

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1/ Cf., for one of the latest and most comprehensive treatments H. B. Brausse: Die Führungsordnung des deutschen Volkes (2nd ed., Hamburg, Hanseatische Verlagsanstalt, 1942).

2/ Fundamentally laid down by Hitler, when discussing the leadership organization of the Party, then still legally clad in the form of a private law association: "The Chairman is responsible for the entire leadership of the Movement. He distributes work and power to the members of the committee below him and to other required collaborators. Each of these gentlemen thereby is exclusively responsible for the tasks conferred upon him." (Mein Kampf) (424th-428th ed., Munich, Eher-Verlag 1939), p. 661).

3/ The term Führer as such, in Nazi literature, is always reserved to Hitler. Leaders in the various fields and regions below him are referred to as "sub-leaders" (Unterführer).

and responsible, according to Nazi theory, only to his "conscience" and the "judgment of history".1/ Under him, the leadership principle permeates the whole structure of Nazi society: "Leadership is the general structural element in the public life of the Reich. It determines not only certain specific realms but dominates all organizations, institutions, and associations which participate in the communal life of the people. State institutions -- above all administration, armed forces, and labor service -- as well as the orders of estates -- economic and cultural estates, Labor Front, enterprise communities -- are governed by the leadership principle".2/ It implies, for instance, in the realm of state administration, that there are no longer any councils or representative bodies which have any share in policy-making or decision (although they may still exist as allegedly "advisory" bodies), and the "collegiate principle" has been replaced by one-man decision throughout the bureaucracy, one man always having complete

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1/ "In the leadership state the unity of state power has been entrusted to the one and sole Führer" (E. R. Huber, Die deutsche Staatswissenschaft, Zeitschrift fur die gesamte Staatswissenschaft, H. Laupp, Tülingen, v. 95, 1934/35, p. 41f.); "In all realms of politics the Führer indicates the aims to be attained, determines the methods to be applied, and makes the basic decisions which become necessary.... He has the exclusive ultimate decision in all affairs of the Movement, the Volk, and the Reich, ... He has not only the totality of executive power but also legislative and judicial power" (E. R. Huber. Verfassung (Hamburg, Hauseatische Verlagsanstalt, 1937, pp. 114, 121).
2/ Ibid., p. 94.

authority over those beneath him and exclusive responsibility toward his superiors.1/ It is true that there has been a good deal of heated discussion in Nazi literature about whether administrative chiefs are real "leaders" in the Nazi sense, possessing, as some authors profound a specific and intimate "loyalty relationship" with a closely-knit "followership", which allegedly is characteristic of leader-followership relations in the Party.2/ The argument does not, however, affect the decisive structural element of the leadership principle, as outlined above, which is its authoritarianism.3/

1/ Hans Frank, Die Technik des Staates, Deutsches Recht, v. 11 (Deutscher Rechtsverlag, Berlin, 1941), p. 2626: "Leadership principle in the administration means: always to replace decision by majority by decision on the part of a specific person with clear jurisdiction and with sole responsibility toward above, and to entrust to his authority the realization of the decision toward below". Cf. also Otto Koellreutter: Deutsches Verwaltungsrecht (Berlin, Junker und Dünnhaupt, 1938), p. 8.

2/ Survey of the different theories in C. H. Ule, Herrschaft und Führung im nationalsozialistischen Reich, Verwaltungsarchiv v. 45 (Berlin, C. Heymann 1940), pp. 205ff. Most prominent representative of the theory that administration implies genuine leadership is Huber (see his Verfassung, pp. 94, 243f.); his most conspicuous opponents are R. Hoehn and Th. Maunz (cf., e.g., the latter's Verwaltung (Hamburg, Hanseatische Verlagsanstalt, 1937), pp. 43f.), who maintain that bureaucracy is a mere machine in the hands of the real leaders.

3/ To what an extent everything else is pure ideology is shown by the emphasis put on the right of the sole leader to determine what is the "will" of the "followership" which he supposedly "embodies": "The leader defends the objective idea of the nation, if necessary even against the subjective arbitrariness of a misguided popular opinion (Huber, Die deutsche Staatswissenschaft, Zeitschrift für die gesamte Staatswissenschaft, v. 95, 1934/35, p. 41).

Spheres of "sub-leadership" have been carefully established by Nazi theorists on the basis of the new leadership-pyramid set up in the various fields of public life.1/ Thus in the realm of state government, the various ministers are the main collaborators of the Führer. These are real "sub-leaders": "The Führer uses the Reich ministers not as subordinate executive organs", as a mere technical apparatus, but as "collaborators...who within their jurisdiction are able to act in a creative fashion...responsible co-creators of the Führer, who under the Führer's guidance administer their offices independently".2/ Their co-signature of laws and decrees symbolizes the fact that the minister "is more than a mere technical instrument of the Führer, that he rather performs independent substantial services"; his signature implies his assuming responsibility toward the Führer.3/ Similarly, and on the same level, such top officials as the chief of the German Police or the Reich Labor Leader of the Labor Service are immediate "sub-leaders" under the Führer.4/

While the Reich government thus constitutes the "supreme leadership council" (Oberster Führerrat), the main sub-leaders in the state bureaucracy, with their own autonomous sphere of

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1/ On some details concerning the realization of the leadership principle in the actual organization of public life in Nazi Germany see Appendix I.
2/ Huber: Verfassung, pp. 115ff.
3/ Ibid., 116f.
4/ Koellreutter: Deutsches Verfassungsrecht (3rd ed., Berlin, Junker und Dünnhaupt, 1938) p. 139.

jurisdiction, are, for instance, the Reich Governors, Provincial Presidents, District Presidents, and Landrate. The Lord Mayors and mayors of the municipalities, large and small, are likewise generally recognized as leaders of their communities since all representative institutions of local self-government were abolished.1/ "Today, each German municipality is headed by a community leader who bears sole responsibility for the whole administration, and thus has become the central figure in a completely different way from the former municipal heads".2/

Similarly, economy has become "leadership economy" (Führungswirtschaft), headed at the top by Göring as Four-Year-Plan Commissioner and under him led by the leaders of the various organizations of so-called economic self-administration, Wehrwirtschaftsführer, etc.3/ There are the leaders and sub-leaders of the other "estates" organizations such as the Reich Food Estate, the Labor Front, the leaders of handicraft and artisans' guilds.4/ In the field of labor not only the Reich Labor Trustees but also

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1/ Huber, Verfassung, p. 291.
2/ Arnold Köttgen: Deutsche Verwaltung (2nd ed., Berlin, Weidmannsche Verlagsbuchhandlung 1937, p. 100. Cf. also Weidemann, Die Selbstverwaltung der Gemeinden und Gemeindeverbände, in Frank (ed.): Deutsches Verwaltungsrecht (Munich, Eher-Verlag 1937), p. 218: "In contradistinction to the old municipal codes the mayor is no longer able to pass on responsibility to collegiate bodies or assemblies".
3/ Huber, Verfassung, pp. 294f.; Brausse, op. cit., p. 144; Dannbeck, Die Amtshaftung, in Frank: Deutsches Verwaltungsrecht, p. 297.
4/ Brausse, op. cit., pp. 166ff.; W. Laforet: Deutsches Verwaltungsrecht (Munich, Duncker und Humblot, 1937), pp. 89f.

each "leader of the enterprise" has been conceded such leadership functions.1/ In the realms of the army and the Party, of course, the principle has found its most conspicuous expression. As far as the latter is concerned, under the Führer and his deputy, the corps of the Reichsleiter constitute the supreme leadership council of the Party, under which there are the various regional and functional officials (Hoheitstrager) of Party and Party organizations.2/

1/ Brausse, op. cit., pp. 163ff.
2/ Brausse, op. cit., pp. 137ff.; Koellreutter: Deutsches Verfassungsrecht, p. 154; Dannbeck, loc. cit., p. 297.

II

Considering this very clear-cut order of jurisdictions in the Nazi leadership hierarchy it would appear as if there would be a similarly clear-cut system of responsibilities, based upon the individual directions and orders given by the various leaders and sub-leaders in their respective areas and fields of jurisdiction. This is however not the case. It would be the case in a non-totalitarian system where jurisdictions and their limits are based upon a well-defined law and where holders of authority or of official functions can be assumed to act within these limits. Under such systems, actions exceeding legal limitations are thus attributable to the individual office-holder who has acted or given orders to act in a specific instance, and not to his superiors. On the other hand, besides the leadership principle, the Nazi totalitarian system is characterized by a somewhat far-reaching exemption from legal restriction which the various agencies and organizations possess, and which gives their "leaders" not only unlimited authority but also practically unlimited latitude of action. This means that in general a leader or sub-leader does not rely so much on giving direct orders, but rather on formulating certain fundamental principles and policies, while delegating a large amount of discretion for carrying them out to their subordinates in the various fields and regions. One of the reasons why the Nazi system has relied more on the execution of implied policies than on outspoken orders, lies in the very illegality or

expressly forbidding it... It has already been shown that after the issuing of the decree on the Protection of Nation and State of February 28, 1933, and the change from the liberal to the National Socialist concept of state and law such limits do no longer exist." There is therefore the "largest imaginable scale of legally permissible means."1/

In veiled though sufficiently clear language one Nazi author, who apparently was not quite in agreement with this radical theory and practice,2/ has described how in the development of police law under Nazism legal limitation had to give way to complete lawlessness and arbitrariness. "Functions and jurisdiction of the Gestapo, as they are developed today, are by no means adequately described through the legal regulations which have been issued concerning them... The new structure was built with an accent on organization, not on substantive law. What was necessary and opportune at the moment had precedence over any intention to build up a system of well-defined laws. Thus, substantive police law has been of secondary importance only.... The concepts of security, order, and danger proved to be sufficiently elastic to justify any and every police action which purported to protect the community, the national wealth, and the order of societal life."3/

1/ Best, Die Politische Polizei des Dritten Reiches, loc. cit. p. 424.
2/ Theodor Maunz, Gestalt and Recht der Polizei, in Idee und Ordnung des Reiches (ed. by E.R. Huber), v.2 (Hamburg, Hauseatische Verlagsenstalt, 1943).
3/ Maunz, loc. cit., pp. 49, 53, 57. See also the same author's Staatsbegriff und Verwaltung, Deutsches Recht, 1935, p. 397.

immorality of a great many of its policies. For instance, it would have been inadvisable, for security reasons as well as reasons of internal and external propaganda, to clad the policy of extermination of Jews, including its "technical" details (system of deportation, erection of gas chambers, removal and utilization of bodies, etc., etc.), into written directives handed down and crystalized from the policy-making top to the executive machine at the bottom. Therefore, at the top broad policies would be formulated, and the sub-leaders would be relied upon for carrying out these policies without their receiving any specific orders.

This is why the Nazi theory of leadership has stressed again and again that "leaders" (including sub-leaders) are on the one hand free from "formalistic" and "nomistic" legal restrictions, while on the other hand each one of them is strictly bound to observe the fundamental Nazi principles in all his actions, and to act in each specific instance "in the spirit of National Socialism." Thus according to Huber,1/ "the essence of each administrative act consists in the realization of the will of the Führer as supreme holder of political power." This however does not imply being bound to formal legality. The aim is not "to put administration under abstract norms, as in the liberal Rechtsstaat where the principle of the legality of administration meant that each

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1/ Verfassung, pp. 149 f. See also Huber, Justiz und Verwaltung, Deutsches Recht, 1935, p. 403.

executive act should be exactly predetermined by law..but rather, under the leadership state, not to limit the executive by specialized laws... Administrative action is intended to implement and crystalize the living law of the people, not a formal norm embodied in statutes. This is why the authorities may possibly act even without express legal basis, namely, whenever the unwritten living law of the people requires such action." Another Nazi theorist 1/ similarly states that in the leadership state "as a matter of principle the official is put into a position of personal responsibility, without being able to hide behind given legal orders... The new state, in order to safeguard the leadership character of administration, tends to avoid too much regulation by law."

It must be said, however, that this latitude in devising and implementing policies without regard to limitations of law depended largely on the extent that the matter governed by a particular policy contained a "political" aspect. The greater the political aspect of the action concerned, the less it would be subject to legal restrictions. On the other hand, the more the action concerned itself with a purely "technical" field, the more it would be subject to express regulation. It is, of course, true that in the Nazi system everything, even the apparently most "neutral" or "technical" field, assumes a political character, since everything is liable to be judged in the

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1/ Arnold Köttgen: Deutsche Verwaltung, pp. 21 f., 42.

light of its agreement or disagreement with Nazi Weltanschauung and policies. Moreover, even the activities of the most "technical" agencies may become auxiliary activities to some highly "political" action, for instance, where the President of a Railway Directorate is put in charge of providing for the transportation necessary to import foreign slave labor into the Reich, or to deport Jews to extermination camps. Nevertheless, it is possible to draw a general distinction between agencies and activities which are usually political and those which are not.1/ To the former belong, above all, the police, which, in the Nazi sense, has functions much broader than the mere safeguarding of security and order. It is likened to the armed forces in its overall function to defend the internal structure of state and society against any disturbance,2/ and its most important branch, the Political Police (Gestapo), is in reality all-powerful, since in the Nazi state the Kompetenz-Kompetenz i.e., the right to decide about jurisdictions, lies with the political authority.

In the realm of the police, therefore, Nazi theory has most frankly recognized the principle of the basically "lawless" action of public authorities. The general "task"

1/ See Ernst Fraenkel: The Dual State (New York, Oxford University Press, 1941), with a distinction between the "prerogative" and the "normative" state. The former is the realm of the Gestapo. "The Prerogative State claims that it represents material justice and that it can therefore dispense with formal justice;" its essence, therefore, is "its refusal to accept legal restraint." (p. 46).

2/ Werner Best: Die Deutsche Polizei (Darmstadt, Wittich Verlag, 1940), pp. 13 f.

presumed to have been given to the police in the Nazi state -- that of safeguarding the state and regime against any disturbance -- implies the supremacy of any of its actions (whether in the form of decree, directive, internal instruction, or pure action) over any existing law: "The activity of the police is neither lawless nor illegal,....if it deviates from former police law, it creates new police law. In whatever form...it may appear, it changes the existing police law -- even if the latter has the form of a statute -- in a legally valid manner."1/ For the police is said to differ from all the other branches of public administration, "which work in solid and stable legal forms;" "it is solely the armed forces with their function to fight the external enemy and the Political Police in its fight against state-hostile tendencies which must be free from such restrictions in order to be able to fulfil their tasks."2/ One Nazi author,3/ in order to show the practically unlimited discretion of the police, has evolved a theory according to which "the police is the irrational and indefinite residuary portion of state sovereignty remaining after deducting all of the particular realms of sovereignty.

1/ Werner Best, Volksordnung und Polizei, Deutsche Verwaltung (W. Kohlhammer, Stuttgart), 1939, p. 241.
2/ Werner Best, Die Politische Polizei des Dritten Reiches, in Frank (ed): Deutsches Verwaltungsrecht, p. 426.
3/ Walter Hamel, Die Polizei im neuen Reich, Deutsches Recht, 1935, pp. 412 ffl, and Wesen und Rechtsgrundlagen der Polizei im nationalsozialistischen Staate, in Frank (ed.): Deutsche Verwaltung, pp. 381ff.

Since the sovereignty of the National Socialist state cannot be rationally delimited, there has to be this ultimate and undefinable substance within the state... There is no positive statute which conveys jurisdiction to the police today. The police draws its legal competences merely from the essence of state sovereignty and its implementation by the Führer... The police touches and penetrates the liberty of the individual in an irregular fashion.... Any legal authorization here remains a fancy." Thus, police becomes "a function whose activities are determined solely through what is politically necessary," and the only "law" applicable to the police is the body of regulations which "distributes this political task among the different police authorities."

This means that the police as such can do whatever it deems necessary, without being restrained by legal limitations. The only legal restrictions necessary even under the Nazi system are those of an internal jurisdictional nature, telling this or that part of the police organization what it may do or may not do, i.e., delimiting functional and regional jurisdiction. As to means and measures there has been no limit: "The legal means at the disposal of the Political Police have not been regulated. They cannot be legally regulated, because the Political Police has to have a free hand in the choice of the measures which may become necessary... Since the essence of the Political Police lies in its function to combat all state-hostile tendencies, it has the right to have resort to any measure necessary for this task, as long as there are no laws

III

Considering the hierarchical structure of the Nazi leadership organization on the one hand, and the wide and indefinite realm of discretion given to each leader in the implementation of fundamental policies on the other hand, it appears possible to develop a new concept of responsibility for actions committed under the Nazi program. A system under which broad policies are devised at a certain level of leadership but where the execution of such policies takes place at lower levels, without the issuance of formal or written orders, and without the imposition of legal restrictions upon the lower state, would seem to place responsibility for whatever happens in the fulfillment of such policies, within the functional and regional realms of jurisdiction, upon the particular leaders who controlled such realms, whether or not they can be proved to have given any specific orders or even to have known of the particular methods used in carrying out the general policies. For example: If a general policy adopted on the highest level of leadership has been to the effect to "eliminate all Jews from European life once and for all", and if in pursuance of such policy a large part of the Jewish population under Nazi rule has actually been exterminated, the acts of physical extermination may be attributed to all leaders and sub-leaders who, under the highest leadership, had functional and regional jurisdiction in connection with the implementation of the Jewish policies of the Nazi regime. All of them can be presumed to have known the Nazi program

and the Nazi policies in this respect, all of them have used their positions to implement them, and all of them have known that in the execution of policy directives no legal restrictions would be observed. Whether or not under such conditions, they have been aware of the particular details of execution in specific cases, appears immaterial.

The Nazis themselves have admitted to this interpretation of responsibility of "leaders". Hitler has said:1/ "Whoever wants to be a leader has with the highest and unlimited authority also the ultimate and heaviest responsibility." Nazi authors have repeatedly stressed this "responsibility" angle of Hitler's power.2/ Since, under the Nazi system the responsibility of the top leaders was practically unenforceable, the reason for this emphasis on responsibility was, therefore, obviously propagandistic: it was meant to show that, unlike "tyrannical" or "dictatorial" regimes, the Nazi regime was not one of arbitrariness and lack of responsibility.3/ It has however been stressed with equal forcefulness for the sub-leaders, where responsibility might mean actual answering for one's actions and behavior to one's superiors. It is claimed that only under the leadership principle can there be genuine responsibility: "The responsibility here imposed is clear and unequivocal, nobody can dodge it in favor of an anonymous majority,

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1/ Mein Kampf, p. 379
2/ See, e.g., Huber: Verfassung, p. 93.
3/ See, e.g., Koellreutter: Deutsches Verfassungsrecht, p. 147. The leadership state is "not a dictatorship" but "the expression of the popular (volksverbunden) guidance of this people and this state by Adolf Hitler."

it is undodgeable (unabwätzbar)."1/ This leader-responsibility has been defined by Nazi theorists in a much broader way than criminal responsibility is usually defined. According to Nazi theory, the leader has to answer for what those entrusted to his leadership do, even if, in some particular case, they have acted against instructions and without any concurring guilt (intent or negligence) on the part of the leader: "There is a deeper meaning in the fact that an officer can under no circumstances use the excuse that his men have failed... The genuine leader regards the guilt of his followership as his own and accepts it, even if, as the case may be, he has been really without guilt himself. He himself may make responsible those who have actually failed, but toward his superiors he alone is the guilty one. Only thus one can understand the principle of authority over those below, responsibility to those above in all its profound meaning."2/

There may indeed be a "deeper meaning" and a more profound justification in holding responsible those who under the Nazi system have occupied positions of higher leadership. In a system based upon terror, on the one hand, and propaganda (opinion monopoly) on the other, "followers" on the lower levels of the leadership pyramid can be said to have almost been deprived of their capacity to act freely. They have become more or less automatons through physical or psychological influence,

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1/ Brausse, Führung und Verwaltung, Verwaltungsarchiv, v. 42 (1937), p. 90.
2/ Brausse: Die Führungsordnung des deutschen Volkes, p. 92

and their actions should legally be attributed to those who have used these means of influence.

In Nazi theory, actions referred to as "failures" and for which the leaders should answer are, of course, actions which are not in accordance with the Party program and Party policies. In reversing these standards and in making the Nazi leaders responsible for what we consider as war crimes, they would indeed have to answer for what has actually been done in accordance with their own standards and policies. The "law" according to which the Nazi leaders have acted was in reality the absence of any legal limitation and since their actions have been in contradiction to what an over-whelming majority of peoples and nations consider as fundamental standards of law and decency,1/ the application of these standards to them seems to imply not the absence of but the vindication of justice.

1/ As a matter of fact, in many cases even in contradiction to what the Nazis, at one time or other, have themselves recognized as legally binding, such as rules of the Hague or Geneva Conventions.

APPENDIX I

In the following, a few examples are given for the implementation of the leadership principle in various fields of public life by way of legislation. It must be kept in mind that, while in some fields this principle was introduced by express statutory or decree provisions, it was never expressly introduced into others, where it was simply implied.

a) Into the Reich Government itself the leadership principle was introduced by implication only.1/ Führer and government have become free from any control by the Reichstag.2/ The law on the Abolition of the Reichsrat (Federal Council)3/ freed the government from control formerly exercised by that body.

b) Leadership principle in the political sub-divisions of the Reich was implemented by

i. the abolition of the legislative assemblies of the States;4/

ii. the Second Law for the Coordination of the States with the Reich of April 7, 1933 5/ and the Law on Reich Governors of January 30, 1935,6/ establishing the Reich Governors as regional leaders in the non-Prussian parts of the Reich;

1/ See Huber: Verfassung, p.107f.
2/ See ibid., p.101.
3/ February 14, 1934 (RGBI.I, p.89)
4/ Law on the reconstruction of the Reich, January 30, 1934 (RGBI.I, p.75).
5/ RGBI.I, p.173.
6/ RGBI.I, p.65.

iii. the Second Decree concerning the Reconstruction of the Reich of November 27, 1934,1/ conferring a similar leadership position upon the Provincial Presidents in the Prussian Provinces.

c) The German Municipal Code of January 30, 1935 2/ introduced the leadership principle into local government of cities, towns, and villages, by expressly endowing the mayor with leadership powers (art. 32) and providing for merely advisory functions of municipal councils (art.48).

d) In the field of labor law, the leadership principle was embodied in the basic Law concerning the Organization of National Labor of January 20, 1934.3/ Art. 1 established the entrepreneur as leader of the enterprise, art. 2 conferred all powers of decision upon this leader in his relations with the employees as "followership", and art. 5 declared that the Councils of Trust, established by the law, had only advisory functions.

e) In the field of economic controls the Decree concerning the Four Year Plan of October 18, 1936 4/ provided for the appointment of Goering as leader of the setup and conferred broadest leadership powers upon him. In other fields of economic organization, the leadership principle was more implied, as, for instance, in the First Decree concerning the Execution

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1/ RGBI.I, p.1190
2/ RGBI.I, p.49
3/ RGBI.I, p.45
4/ RGBI.I, p.887

of the Law on the Preparation of the Organic Structure of German Economy of November 27, 1934,1/ where the principle is implied in the organization of the various economic "Groups" and "Chambers".

f) In the field of agricultural controls, the major agency dealing with these matters, the Reich Food Estate, was created on the basis of the leadership principle, the Reich Peasant Leader being established as leader of the Food Estate: First Decree concerning the Provisional Structure of the Reich Food Estate of December 8, 1933, issued by the Reich Minister of Food and Agriculture.

g) Finally, there may be mentioned two organizations somewhere in the middle between state and Party organizations. The Law on the Reich Labor Service of July 26, 1935 2/ established the Reich Labor Leader of the Labor Service as leader of the Labor Service (art.8). The Law concerning the Hitler Youth of December 1, 1936 3/ gave corresponding leadership powers to the Reich Youth Leader (art.9).

1/ RGBI.I, p.1194
2/ RGBI.I, p.769
3/ RGBI.I, p.993

APPENDIX II

Evaluation of Sources Referred to in the Paper

In the following, authors are referred to in the sequence in which their writings appear in the foot-notes of the paper.

H.B. Brausse: Young Nazi student of political science and public law, specialist in theory of "leadership".

Hitler: Mein Kampf: This book, under Nazism, was recognized as a kind of source of law, in authority taking precedence even over official laws and decrees.

E.R. Huber: One of the three or four foremost Nazi authorities on theory of the state and on public law, notably constitutional law. Foremost protagonist of the "new Nazi concepts and doctrines" which Nazi theoreticians opposed to "old liberal thought".

Hans Frank: In addition to his other leadership functions (Reich Minister, Governor General of Poland) official "leader" of German (Nazi) lawyers. His statements, therefore, have quasi-official character. -- The perodical Deutsches Recht was the official publication of the Nazi Lawyers Association (NSRB).

Otto Koellreutter: Professor of public law at the University of Munich. Prior to 1933 a German Nationalist, he turned Nazi in 1933, and defended the principal Nazi tenets and doctrines although, from time to time, trying to preserve some remnants of pre-Nazi thinking and concepts in the face of the more radical theorists.

C.H. Ule: One of the younger Nazi students of public law, student of E.R. Huber. -- The periodical Verwaltungsarchiv is an old German public law periodical which, of course was Nazified after 1933.

Reinhard Hoehn: One of the few foremost Nazi theoreticians of public law and political science. Like Huber tried to create new "Nazi" concepts for this science.

Theodor Maunz: Nazi author specializing in administrative law. His writings contain certain remnants of pre-Nazi doctrine.

Zeitschrift fuer die gesamte Staatsreichtswissenschaft: Old and renowned German political science review, Nazified after 1933.

Arnold Koettgen: Authority on administrative law. Became outwardly, but otherwise not too thoroughly, Nazified after 1933.

Johannes Weidemann: Nazi specialist in municipal government.

Hans Frank (editor): Deutsches Verwaltungsrecht (1937): The volume contains contributions by several of the most authoritative Nazi authors on public law and administration and can thus be considered as quasi-official.

Sigmund Dannbeck: Attorney-at-law, author on topics of administrative law.

W. Laforet: Professor of public law. Belonged to Center Party prior to 1933, not particularly thoroughly Nazified after 1933.

Ernst Fraenkel: German lawyer and political scientist now living in this country. His Dual State is one of the best treaties on the Nazi legal and political structure, abundant in source material.

Werner Best: Nazi of the old guard, became legal advisor to the Gestapo after 1933 and one of the Nazis' foremost experts on police law and police -- in particular Gestapo -- practice.

Deutsche Verwaltung: A Nazi periodical dealing with questions of public law.

Walter Hamel: One of the younger Nazi theorists of political science and public law.